

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-02489

PRESENT: SCUDDER, P.J., SMITH, CARNI, AND SCONIERS, JJ.

IN THE MATTER OF THE STATE OF NEW YORK,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

RICHARD LESTER, A PATIENT IN THE CARE AND
CUSTODY OF ST. LAWRENCE PSYCHIATRIC CENTER,
RESPONDENT-RESPONDENT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FRANK BRADY OF
COUNSEL), FOR PETITIONER-APPELLANT.

EMMETT J. CREAHAN, DIRECTOR, MENTAL HYGIENE LEGAL SERVICE, ROCHESTER
(LISA PAINE OF COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from an amended order of the Supreme Court, Wayne County
(Thomas M. Van Strydonck, J.), entered September 28, 2010 in a
proceeding pursuant to Mental Hygiene Law article 10. The amended
order directed the release of respondent from custody.

It is hereby ORDERED that the amended order so appealed from is
unanimously reversed on the law without costs and a new trial is
granted.

Memorandum: Petitioner appeals from an amended order pursuant to
Mental Hygiene Law article 10 releasing respondent from custody upon a
jury verdict in his favor on the issue of whether certain kidnappings
he attempted to commit in 1984 (1984 attempted kidnappings) were
"sexually motivated" (see Mental Hygiene Law § 10.03 [f], [g] [4]; [p]
[4]). Petitioner contends that Supreme Court erred in refusing to
instruct the jury that it could consider evidence of kidnappings
committed by respondent in 1980 on the issue of respondent's motive
and intent with respect to the 1984 attempted kidnappings. We agree.

Inasmuch as petitioner's burden in the proceeding was to
establish by clear and convincing evidence that the 1984 attempted
kidnappings were "sexually motivated" (see Mental Hygiene Law § 10.03
[s]; § 10.07 [c], [d]), we conclude that the court should have
instructed the jury that it could consider the evidence of the 1980
kidnappings on the issue of respondent's intent in committing the 1984
attempted kidnappings and whether those crimes were "sexually
motivated" (see *Matter of State of New York v Shawn X.*, 69 AD3d 165,
172, *lv denied* 14 NY3d 702). We therefore reverse the amended order

and grant a new trial.

Entered: April 27, 2012

Frances E. Cafarell
Clerk of the Court